IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1115 OF 2005
IN
SUIT NO.2340 OF 1997

The Board of Trustees of the
Port of Bombay ....Plaintiff
V/s.
M/s.Guru Nanak Paper Mills Ltd. & Ors. ....Defendants

Mr.U.J. Makhija i/b Mulla & Mulla & C. B. & C. for the Plaintiff.
Mr.K.R. Shriram for Defendant No.2.

CORAM : S.J. VAZIFDAR, J.
DATED : 30TH JANUARY, 2006.

P.C. :

1. This Chamber Summons has been taken out by Defendant No.2 for setting aside an order dated 31st March, 2005 of the Prothonotary and Senior Master permitting the amendment to the writ of summons and granting extension of time for service of the writ of summons.

2. The suit was filed on 30.4.1997. The writ of summons was issued on 28.8.1997 and made returnable on 4.11.1997.

3. Defendant No.1 was served. Defendant No.2 could not be served as they have admittedly changed their address. It is true that the Plaintiff

thereafter did not take any steps for extending the returnable date. However, it appears that the matter itself was placed before the Prothonotary and Senior Master for direction only in 2004. This by itself would not absolve the Plaintiff of the responsibility of serving the writ of summons.

4. Mr.Shriram, the learned counsel appearing on behalf of Defendant No.2 submitted with considerable justification that the defence of Defendant No.2 has been prejudiced as a result of this delay of almost eight years. According to him, Defendant No.2 is now not in possession of all the evidence required in the matter.

5. However, a dismissal of the suit is a drastic consequence. In the facts and circumstances of this case though I have decided to dismiss the Chamber Summons, Defendant No.2 shall be at liberty to contend at the hearing of the suit regarding prejudice caused by the alleged non-availability of the evidence as a consequence of the delay on the part of the Plaintiff.

6. In the circumstances, subject to the above conclusion, the Chamber Summons is dismissed. The Plaintiff shall pay the costs of this Chamber Summons

to Defendant No.2 fixed at Rs.5000/- within eight weeks from today.